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**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

# Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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# The Human Rights Council must urge States to reform discriminatory abortion laws [1]

*"Every now and then there comes along a case that seems too tragic to comprehend- where cruelty from one individual to another is compounded and amplified by a callous governmental response. That is how I feel about the case of a 10-year-old pregnant girl, who was raped by her step-father, only to find the Paraguayan authorities are denying her the option of an abortion" Guadalupe Marengo, Amnesty International* [2]

At the 29th session of the UN Human Rights Council, the Working Group on the elimination of discrimination against women (the Working Group) will present, among others, reports on its visits to Chile, Peru and Spain. In its preliminary observations on those country visits the Working Group expressed concerns about the criminalization of abortions under all circumstances, restrictions on access to therapeutic abortions, and proposed restrictions to legislation that could jeopardize women's access to legal abortions.

Women and girls continue to see their health and lives being put at risk and face multiple other human rights violations within the criminal justice system because of discriminatory laws, which criminalise or restrict access to health information and services, such as abortion, needed only by them. Women and girls from already marginalised groups, such as the poor, are often disproportionately affected by such laws.

It is well recognized that criminalization of abortion compels women and girls to undergo illegal abortions and that many of them die as a result of such clandestine and unsafe abortions. Unsafe abortion is the third leading cause of maternal mortality globally, causing about 47,000 deaths per annum, and 5 million largely preventable disabilities, according to the World Health Organisation's (WHO) estimates. The WHO figures reflect that globally deaths and morbidity resulting from abortion are high in countries where access to abortion is legally restricted.

**Chile, El Salvador** and **Nicaragua** are among the few countries in the world that criminalise abortion in all circumstances, without the possibility of exceptions, even when a woman or girl's life is in danger. There are other countries with highly restrictive laws, which allow for few exceptions, for example only when the pregnancy poses a 'real and substantive risk' to a woman's life (**Ireland**), when a woman's life is at risk (e.g. **Paraguay**) or when a woman's life or physical health are at risk (e.g. **Peru**). However, even on these minimal grounds women and girls may not be able to access abortions when they are legally entitled to receive one.

The Working Group has expressed support for the Bill that has been presented to the Chilean Congress, which would decriminalize abortion where there is a "danger to the woman's life, rape or non-viability of the foetus". It also recommended decriminalization of abortion when the pregnancy constitutes a threat to a woman's mental or physical health. The Bill is pending.

The criminalization of abortion, both in cases of total abortion bans and of highly restrictive abortion laws, is discriminatory and obstructs the access women and girls have to necessary health services, and puts their health and lives at risk. This often disproportionately affects women and girls who do not have the means to seek a safe and legal abortion in another country or to pay for expensive illegal abortions in private clinics in the country. It can also have a chilling effect on access to legal abortion.
Women and girls can also be denied access to health care treatment for serious medical conditions such as cancer or lupus for example on the grounds that treatment may damage the foetus.

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[1] **A version of this statement published on the Amnesty International website includes footnotes and other information** AI Index IOR 40/1704/2015, https://www.amnesty.org/en/documents/ior40/1704/2015/en

[2] https://www.amnesty.org/en/articles/blogs/2015/05/torturing-a-10-year-old-rape-victim-how-the-paraguay-authorities-are-complicit-in-a-pregnant-girls-suffering/

Women and girls, often as young as 10-14 years of age, who are pregnant as a result of incest or rape are denied legal abortion and compelled to carry pregnancy to term, regardless of their wishes, with negative short and long-term physical and mental health consequences. Multiple human rights treaty bodies have concluded that such denial of legal abortion to victims of incest or rape amounts to a breach of their right to be free from cruel, inhuman or degrading treatment, as well as a violation of their right to redress and reparation. The Working Group, together with other Special Procedures, has also condemned the denial of abortion to a young rape victim as a potential violation of the "rights to life, to health, and to physical and mental integrity of the girl as well as her right to education, jeopardising her economic and social opportunities".

In addition, women and girls who seek post-abortion care in the health system after having undergone unsafe clandestine abortions are being reported to law enforcement officials by the health professional assisting and can face criminal charges. In **El Salvador**, many women serving long-term prison sentences on pregnancy-related charges have been reported by medical providers when seeking medical care for complications of illegal abortion or miscarriages.

The criminalization of abortion creates also the so called "chilling effect" on health care providers and deters them from providing post-abortion care and abortion even when legal, due to the fear of criminal prosecution or because they are unclear about how to interpret the law.

In **Ireland**, where in addition to criminalization of abortion in most cases, the provision of abortion-related information is also criminalized and this creates a huge obstacle for medical providers to perform timely referrals to safe abortion providers in the UK (where women in Ireland are forced to travel to undergo safe abortions) and results in women having to rely on informal networks or experiencing delays in accessing necessary health services.

The stigma around abortion and the chilling effect that criminalization of abortion has result in inadequate reporting of abortions and of maternal mortality and morbidity. For example, whilst data indicates that **Chile** has one of the lowest maternal mortality rates in the Latin American region, these numbers are likely much higher, but due to the illegal status of abortion the true numbers are not accurately reflected.

Criminalisation of abortion is rooted in persistent gender discrimination and stereotypes around women's primary role as child bearers and mothers, including through placing unreasonable obligations on women and girls to protect foetal life to the detriment of their rights. The Working Group has noted the vital importance of article 5 of the Convention on the Elimination of All Forms of Discrimination against Women, which requires States to eliminate prejudices and modify stereotyped gender roles. These harmful stereotypes have negatively influenced the development of laws, policies and practices around the world, including the total ban on abortion, its criminalization and the response by the health care and criminal systems.

Even countries like **Spain**, which have repealed draconian abortion laws, have recently been under pressure by conservative interest groups to restrict access to safe and legal abortion services. Although the government of Spain withdrew an initial retrogressive abortion bill which would have violated women and girls fundamental human rights, it has put forward a new proposal, which would restrict access to safe abortion for 16-17 year old girls and some women with mental disabilities by requiring them to obtain parental or guardian consent before they can access safe and legal abortion services. This proposal also goes against the recommendation by the Committee on Economic, Social and Cultural Rights that urged Spain to fully implement the existing law and ensure access to safe and legal abortion services for all women, paying special attention to the situation of adolescents and migrants. The Working Group has expressed concern about the obstacles that parental/guardian consent and conscientious objection by medical professionals may pose on women's access to legal abortions.

**Recommendations**

Amnesty International urges HRC members and observer states to raise the concerns expressed in this statement in HRC debates and in bilateral dialogues with concerned countries, including the ones mentioned in this statement.

It calls on the HRC to urge States to:

- Repeal laws that criminalize abortion and the provision of abortion-related information, eliminate all punitive measures for women and girls seeking abortion, and for health care providers and others performing abortions or assisting in obtaining such services where consent is fully given;
- Ensure access to abortion both in law and in practice, at a minimum, in cases where pregnancy poses a risk to the life or to the physical or mental health of a pregnant woman or girl, in cases of severe and fatal fetal impairment, and in cases where the pregnancy is the result of rape or incest;
- Ensure that when abortion is legal, it is available, accessible and of good quality for all women and girls without coercion or discrimination, provided with respect for privacy and confidentiality, and without additional barriers such as the requirement for a third party consent;
- Ensure that all laws and practices clearly establish the duty of health care providers to respect patient confidentiality, including by not reporting women and girls suspected of undergoing abortions and those who have had miscarriages to law enforcement authorities;
- Immediately and unconditionally release all women and girls who have been detained or imprisoned in relation to undergoing abortions or for having miscarriages, and drop charges against women and girls whose cases are pending trial;
- Tackle abortion-related stigma and take measures to eliminate gender discrimination and harmful stereotypes about gender roles, which are behind the denial of health services to women and girls.